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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,709	01/08/2004	John H. Hayes	010628.50474C3	5556
23911	7590	01/25/2007	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			CONLEY, FREDRICK C	
		ART UNIT	PAPER NUMBER	3673
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/25/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/752,709	HAYES, JOHN H.	
	Examiner	Art Unit	
	FREDRICK C. CONLEY	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,947,500 to Seiler.

Claim 1, Seiler discloses a mattress system, comprising:

a mattress (1,2,3) having a top surface defined by an upper strip 3 and a bottom surface defined by a base layer 1;

a cavity arranged in the mattress, the cavity being open at least toward the top surface and having a defined size;

an expandable cushion (4-9) arranged in the cavity;

a mattress protector (19,20) covering at least the top surface of the mattress, the protector including a first portion defined by an insert 19 that extends into the cavity and a second portion defined by a cover layer 20 that extends over the expandable cushion arranged in the cavity; and

a control system 17 operatively coupled with the cushion to control an expansion and contraction of the cushion, wherein the control system includes a fluidic pump 18 arranged to pump fluid into the expandable cushion, a fluid relief mechanism arranged to allow fluid to escape the expandable cushion (col. 3-4 lines 66-68 & 1-10), and a control system defining a fluid pressure switch operable to automatically maintain a

defined pressure level in the expandable cushion during a given cycle (col. 4 lines 11-21).

Claim 2, wherein the fluid is air, and wherein a control switch is provided to control an inflation and deflation of the expandable cushion.

Claim 3, wherein the control switch is inherently an electric control switch.

Claim 5, wherein the fluid is air.

Claim 7, wherein the fluid relief mechanism allows the fluid to escape the expandable cushion to maintain the defined pressure level.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,947,500 to Seiler in view of U.S. Pat. No. 4,867,140 to Hovis et al.

With regards to claims 4 and 5, Seiler discloses all of the Applicant's claimed limitations except for a reservoir and the fluid being a liquid. Hovis discloses an inflatable device having a reservoir 62 and employing a liquid (col.. 2 lines 65-68). It would have been obvious for one having ordinary skill in the art at the time of the invention to employ a reservoir and liquid as taught by Hovis in order to pressurize the system of Seiler.

Response to Arguments

Applicant's arguments filed 11/06/06 have been fully considered but they are not persuasive. The Applicant relies on broad structural limitations that fail to clearly define the present invention over the prior art of record. The structural limitations relied upon by the Applicant to define the mattress in claim 1 are comprised of merely a top and bottom surface wherein a cavity is arranged and is open at least at the top surface to the extent of the Applicant's invention. As stated above, the mattress (1,2,3) of Seiler has a top surface defined by an upper strip 3, a bottom surface defined by a base layer 1, and a cavity arranged in the mattress being open at least toward the top surface and having a defined size (fig. 2-3). Examiner is construing Seiler's cover 20 and insert 19 as the claimed mattress protector. Applicant is limiting his argument to the cover layer alone, not the cover layer and insert in combination. Thus Applicant's arguments are not on point. The Applicant does not provide any other structural limitations to clearly distinguish the mattress of the present invention over the mattress of the prior art of record, and the Examiner is not precluded from making the interpretation as stated above. Therefore, the broad structural limitations fail to clearly define the present invention over the prior art of record.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C. CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PATRICIA L. ENGLE can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC


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